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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. A-692

WESTMINSTER PRESBYTERIAN CHURCH OF ENID, ET AL.,
Petitioners,

VERSUS

PRESBYTERY OF CIMARRON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Will the Oklahoma Supreme Court be permitted to adopt and follow for the first time *Watson* v. *Jones*, 80 U.S. 679 (1872),[1] along with most state and federal courts, as the controlling decision with respect to the role of civil courts in church property disputes?

2. Did the Oklahoma Supreme Court apply the *Watson* "rule of action" correctly by accepting as "final and binding" the decision of Respondent, Presbytery of Cimarron,[2] a church judicatory body, to dissolve the Westminster

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[1] Hereinafter cited as *"Watson."*
[2] Hereinafter cited as the *"Presbytery."*

Presbyterian Church of Enid,[3] and control its property "according to ecclesiastical rule, custom or law?"

STATEMENT OF THE CASE

The facts of this case are mostly undisputed. The Petitioners' "Statement of the Case" (Pet. 3-6) and the findings of the Oklahoma Supreme Court (Pet. App. IV-VIII) allude to the facts involved and Respondent does not propose to extend its remarks by submitting an extended "Statement of the Case" to a point of being redundant as to the relevant facts involved.

The facts were introduced generally into the record by joint stipulation of the parties. The Respondent respectfully suggests that the points and issues raised could be submitted herein in summary form as follows:

I. Summary of the Case

This case involves a dispute between the parties as to the ownership of two parcels of real property (and the appurtenances and improvements thereunto belonging) following the formal dissolution of the "Westminster Church" by "the Presbytery" as the highest judicatory body to whom the dispute was referred under and according to the Constitution of the United Presbyterian Church in the United States of America.[4]

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[3] Hereinafter cited as the *"Westminster Church."*

[4] Hereinafter cited as the *"United Presbyterian Church."* In 1958 the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church in the United States of America.

II. Summary of the Facts

A. The "hierarchical nature" of the *United Presbyterian Church*

The United Presbyterian Church is a religious society composed of lay members and clerical members who are organized under laws, rules, and regulations compiled in a "Constitution" designated as "The Book of Order" (Pet. App. VIII).

Within this united sovereign church are various components with the congregation being considered only as a subordinate member of a general church organization in which superior ecclesiastical tribunals exercise general and ultimate power of control as "judicatories" over the whole membership.

The four "judicatory" tribunals within the United Presbyterian Church are in ascending order as follows:

(1) The "session" composed of elected elders of the local church and the pastor who presides at all meetings.

(2) The "Presbytery" composed of representative delegates from several member churches within a geographic area.

(3) The "Synod" composed of member "Presbyteries" in organized groups within a larger geographic area.

(4) The "General Assembly" which is the supreme governing body composed of elected members from all of the particular churches and judicatories within the United Presbyterian Church.

B. "The Westminster Church"

The *Westminster Church* was organized in 1928 in affiliation with and a part of the Presbyterian Church of the United States of America. In this same year it was incorporated in Oklahoma and according to its Articles of Incorporation its sole purpose was to form a "local church for religious worship affiliated with and a part of the Presbyterian Church of the United States of America" (Pet. App. IV).

Title in ownership of two parcels of real estate was separately acquired by standard conventional warranty deeds without expressed reservation, reversion or other limitation. The sanctuary property was acquired in 1928 (Pet. App. IV) and the manse property was purchased in 1963 (Pet. App. V).

From its organization in 1928 through its forty-one years of existence it received financial aid as a "National Mission Aid Church" of the *Presbytery* (Pet. App. V).

On the weekend of July 4, 1969, the pastor of the *Westminster Church* contacted the Chairman of the "Presbytery's National Mission Committee to report a financial crisis." Thereafter several meetings between the session of the *Westminster Church* and the "Committee" convened to attempt to solve the financial problems (Pet. App. V).

The "Committee" recommended to the Presbytery that the *Westminster Church* be dissolved because of its serious financial difficulties and on November 7, 1969, in called meeting the *Presbytery* as a "higher judicatory body" of

the *United Presbyterian Church* voted to dissolve the *Westminster Church* and mandated the following actions:

"(1) that the final worship service of the Enid church be held December 28, 1969;

"(2) that said Church's Session issue letters to the members of its congregation authorizing transfers of their memberships to other congregations of the United Presbyterian Church in the United States of America; and

"(3) that the Trustees of the Enid Church transfer to plaintiff all properties then held by that Church" (Pet. 5).

C. The action taken by Respondent Presbytery

Following the final church worship service on December 28, 1969, the *Presbytery* through its delegated officials attempted to obtain deeds and other transfer papers to the real estate and other assets of the dissolved church. Such efforts were unsuccessful. On June 11, 1970, legal action was filed by the *Presbytery* to have a civil court determine and resolve finally the ownership of the church property involved in this dispute (Pet. App. VI).

Two weeks after suit was filed a minority number of members of this dissolved church met and voted "to declare ourselves an autonomous Presbyterian Church known as the Westminster Presbyterian Church in Enid, Oklahoma," and expressed their desire to keep the church property (Pet. App. VIII).

D. The proceedings below

The parties waived right to jury trial and when the trial judge called the case to hearing the parties presented written stipulations of fact with further oral stipulation that such method of proof would become a part of the record. The *Presbytery* as plaintiff introduced in evidence the constitution of the *United Presbyterian Church* and additional testimony of witnesses in regard to the "financial crisis" of the church, which prompted the formal action of the *Presbytery* to dissolve the *Westminster Church* (Pet. App. VIII).

When the *Presbytery* rested its case the *Westminster Church* as defendant, demurred to the evidence and the trial court without explanation, reason or conclusion of law sustained such demurrer. After its Motion for a New Trial was overruled by the trial court the *Presbytery* lodged appeal to the Supreme Court of the State of Oklahoma (Pet. App. VIII).

On October 9, 1973, the Oklahoma Supreme Court reversed the trial court with remand and direction to proceed in a manner not inconsistent with the *Watson* "rule of action" which the Court adopted as the law of Oklahoma. *Presbytery of Cimarron* v. *Westminster Presbyterian Church of Enid, et al.*, 515 P.2d 211.

ARGUMENT

I. Summary of the Argument

The Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma should be denied by this Court pursuant to Rule 19 of this Court because:

(1) the Oklahoma Supreme Court did not decide a substantial federal question which had not previously been decided by this Court;

(2) the decision of the Oklahoma Supreme Court is in accord with the applicable decisions of this Court;

and

(3) there are no other "special and important reasons" for granting certiorari in this case.

The Oklahoma Supreme Court based its decision in this case on the *Watson* "rule of action" and on "the better reasoned decisions" in harmony therewith in other jurisdictions (Pet. App. XIV).

The Oklahoma Supreme Court in applying *Watson* recognized correctly that the *United Presbyterian Church* has a "hierarchical structure" as its form of government and accepted as "final and binding" the ecclesiastical decision of Respondent *Presbytery* to dissolve the *Westminster Church* and control its affairs and its property.

In reaching the decision the Oklahoma Supreme Court was not called upon to resolve "religious beliefs or a departure from doctrine or practice" controversy. As that Court stated in its opinion the dispute "resulted from financial difficulties rather than from any differences in religious beliefs" (Pet. App. XV).

No other "special or important reasons" are shown by the Petitioners to cause this Court to grant their Petition. This case is not of national importance. Nor did the Oklahoma Supreme Court deny petitioners their religious freedom since each individual involved in whatever "schism"

occurred here was not prevented from withdrawing from the *United Presbyterian Church* to practice the religion of his choice elsewhere.

The Oklahoma Supreme Court adopted *Watson* and merely followed the "rule of action" of that landmark case in reaching its decision here.

II. Argument in Support of the Decision

A. The Oklahoma Supreme Court correctly interpreted and followed controlling decisions of this Court on the Role of Civil Courts in church property disputes.

The role of civil courts in church property disputes has been considered by this Court on several occasions and the landmark case decided more than 100 years ago is *Watson* which the Oklahoma Supreme Court adopted for the first time and followed here.

Watson arose out of a "schism" in the Louisville Presbyterian Church stemming from the issue of slavery. In upholding the faction in that church who remained loyal to the National Presbyterian Church *Watson* held that in a property dispute involving a church of hierarchical polity, the civil court must accept as "final and binding" in the cases before them the ecclesiastical decisions of the highest tribunal to which the dispute has been taken.

Watson classified three types of questions concerning the rights to property held by ecclesiastical bodies which had come before the civil courts as follows:

> "1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the prop-

erty is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.

"2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned owes no fealty or obligation to any higher authority.

"3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization." 80 U.S. at 722.

The *Watson* case involved the third type of these classes of which the Court said:

"The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod and which appeals to the courts to determine the right to the use of property so acquired . . . (Here is a case) of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property . . . *In cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments.* There are in the Presbyterian system of ecclesiastical

government, in regular succession, the Presbytery over the session or local church, the Synod over the Presbytery, and the General Assembly over all. These are called, in the language of the church organs, 'judicatories' and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.

"*In this class of cases we think the rule of action which should govern the civil courts,* founded in a broad and sound view of the relations of the church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, *whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of judicatories to which the matter has been carried, the legal tribunals must accept such decision as final, and as binding on them, in their application to the case before them*" 80 U.S. at 726. (Emphasis added.)

The above "rule of action" to the effect that civil courts must accept the ecclesiastical decisions of a hierarchical church as "final" was further discussed by this Court which concluded:

"The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations and officers, within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if

> anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. *It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*" 80 U.S. at 728. (Emphasis added.)

The "conclusiveness" of the *Watson* "rule of action" has been cited on several occasions with approval by this Court. In a case involving a question of authority in the selection of a chaplaincy where a Roman Catholic Archbishop's decision was denied review by a civil court, this Court stated:

> "In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929), citing *Watson*."

In 1952 this Court converted the principles of *Watson* and *Gonzalez* in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church of North America*, 334 U.S. 94, into a rule of federal constitutional law under the free exercise of religion clause of the First Amendment.

In the decades which followed the decision in *Watson* many states enacted "implied trust statutes" in regard to establishing statutory law which would recognize the own-

ership of church property in a general church in instances where a form of government was "hierarchical."

The "implied trust law" of the State of Georgia contained a condition, or an exception, whereby, if a general church might substantially depart from tenets of faith and practice which had existed at the time the local church affiliated with the general church, then the "implied trust" theory of ownership would terminate.

This Court granted certiorari to review this condition of the Georgia law in *Presbyterian Church in the United States of America, et al.* v. *Mary Elizabeth Blue Hull Memorial Church,* 393 U.S. 446,[5] and reaffirmed the principle of *Watson* while reversing the state court on First Amendment considerations. This Court stated:

> "The restraints of the First Amendment as applied to the states through the Fourteenth Amendment do not permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441.

Thus, *Hull Church* approved the "rule of action" in *Watson* and *Gonzalez* and quoted with approval that portion of Mr. Justice Brandeis' opinion in *Gonzalez* at page 447 where it was stated:

> "In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest

[5] Hereinafter cited as *"Hull Church."*

made them so by contract or otherwise. *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929), citing *Watson*."

Further, in *Hull Church* this Court recognized another approach to enable civil courts to resolve church property disputes based on "neutral principles of law." *Hull Church* explained such approach as follows:

> "Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are *principles of law, developed for use in all property disputes, which can be applied without establishing churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.*" 393 U.S. at 449. (Emphasis Added.)

In *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970),[6] Mr. Justice Brennan explained the choices civil courts may have in adopting either the "rule of action" of *Watson* and *Gonzalez* or "neutral principles of law" recognized in *Hull Church* as follows:

> "It follows that a state may adopt any one of various approaches for settling church property disputes so

[6] Hereinafter cited as *"Church of God."*

long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.

". . . Thus the States may adopt the approach of Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872), and enforce the property decisions made within a church of congregational polity 'by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government,' id., at 724 *and within a church of hierarchical polity by the highest authority that has ruled on the dispute at issue,* (Emphasis added) . . . Under *Watson* civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage." 396 U.S. 368.

or

"(N)eutral principles of law, developed for use in all property disputes . . ."

or a state may pass

". . . (S)pecial statutes governing church property arrangements in a manner that precludes state interference in doctrine [provided that] (S)uch statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies." 396 U.S. at 370.

There is no question that this Court in *Hull Church* approved the *Watson* "rule of action." Nevertheless if it would ever be contended by a strained construction that *Hull Church* replaced *Watson* "rule of action" with "neu-

tral principles of law" such notion will be dispelled by *Church of God* which recognized three choices a state may adopt to resolve church property disputes.

The Oklahoma Supreme Court properly adopted the *Watson* "rule of action" as the choice of this state of the three alternatives recognized in *Church of God* to be followed in resolving church property disputes.

III. Argument in Answer to Petitioners

The petitioners rely upon three propositions for granting the writ of certiorari.

None is tenable and the argument in support of each "reason" is without substance in view of the application of the *Watson* "rule of action."

Respondent answers the argument under the following heading:

A. Constitutional guidelines were followed by the Oklahoma Supreme Court in resolving this church property dispute.

The petitioners suggest in "Reasons 1 and 2" that secular law of property and not ecclesiastical law consideration controls and that the *Watson* "rule of action" does not apply to property.

In its decision the Oklahoma Supreme Court after adopting *Watson* stated a forceful significant summary of the law as follows:

> "(A)nd it is our opinion, in accord with our quotation from Watson v. Jones, supra that when the Westminster Presbyterian Church of Enid, Oklahoma—or its members for it—petitioned the Presbyterian Church

of the United States in America for, and was granted affiliation with the National church organization, it impliedly and in effect (if not expressly) agreed to abide by the national church's constitution and regulations. As, at the time the present controversy arose, the Enid church was an integral part of the larger church organization, *it is bound* under that church's hierarchical form of government or polity, by its constitution and its judicatory decisions. *We think this conclusion is supported by the weight of all the better reasoned decisions.*" (Emphasis added.) (Pet. App. XIV).

The *Hull Church* decision was handed down in 1969 at a time contemporary to the "financial crisis" encountered by the *Westminster Church*. After this church was dissolved by the *Presbytery* on November 7, 1969, the "neutral principles of law" and "autonomous church" phrases of *Hull Church* became the subject of debate as to whether the effect of the decision qualified *Watson* to such extent that the "rule of action" was replaced by a new concept.

It is a reasonable inference that the *Hull Church* case prompted the "small group" of former *Westminster Church* members to try to form an "autonomous Presbyterian Church."

Significantly, in its decision the Oklahoma Supreme Court determined that it was unnecessary to apply or "recognize" the secular law of Oklahoma and that the *Hull Church* decision was not of "significant assistance in this case" (Pet. App. XV). The "choice" of *Watson* by the Oklahoma Supreme Court in harmony with *Church of God* was clear and emphatic and the rejection of any consideration

of the *Hull Church* decision made the contention of Petitioners' untenable.

Contrary to the argument of the petitioners, the law has been settled for more than 100 years by *Watson* that "ecclesiastical rule, custom," or law "is controlling upon civil courts with respect to decisions in church property disputes."

The *Watson* "rule of action" goes to the very core of the *United Presbyterian Church* constitutional provision as noted by the Oklahoma Supreme Court in its decision as follows:

> "Section 62.11 of the Book of Order of the *United Presbyterian Church* provides:
>
> * * * * * *
>
> "(c) Whenever . . . 'a particular church' is formally dissolved by the Presbytery . . . such property as it may have both real and personal, shall be held, used and applied for such purposes and trusts as the Presbytery may direct, limit and appoint and such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America" (Pet. App. VI-VII). (Omitted Portion intended.)

B. The hierarchical nature of the Presbyterian Church

The petitioners contended that the former members of this dissolved Presbyterian church had a right to disassociate with the national church and maintain an independent character as well as to continue in the possession and ownership of church property (Pet. 10-11).

The Oklahoma Supreme Court in its decision answered this proposition of Petitioners' correctly wherein it is stated:

> ". . . It is also our opinion that if, when a local church voluntarily becomes an integral part of a national hierarchical church, it is thereafter bound by the latter's constitution and its judicatories' decisions, the holding of its property is likewise controlled by such provisions of said constitution and the authorized mandates of said judicatories. . . ."

The facts in this case are undisputed and according to Presbyterian Church law *Westminster Church* was properly organized as a Presbyterian Church; incorporated in the State of Oklahoma with "its sole purpose" to be affiliated with the *United Presbyterian Church;* that it continued such affiliation for more than forty years; and was dissolved according to Presbyterian Church law. Any attempt to convert this "hierarchical" church to a "congregational" church having an independent form of government wherein the members owe no fealty or obligation to any higher authority has not been permitted by this Court or by any other state court. To permit such conversion would destroy the First and Fourteenth Amendment considerations in every church dispute.

The dissatisfied members of this dissolved Presbyterian church were privileged to withdraw voluntarily as members of the general *United Presbyterian Church* society and to worship elsewhere wherever such individual would desire but such members cannot be permitted to retain imagined rights to church property following proper dissolution.

C. Rule 19 of this Court should be applied.

The petition for writ of certiorari to the Supreme Court of the State of Oklahoma should be denied pursuant to Supreme Court Rule 19 because:

(1) The Oklahoma Supreme Court did not decide a federal question which had not been previously decided by this Court;

(2) The decision of the Washington Supreme Court is in accord with applicable decisions of this Court;

(3) There are no "special or important reasons" shown by petitioners for granting certiorari in the case.

For the first time the Oklahoma Supreme Court adopted and followed *Watson* "rule of action" with respect to the role civil courts may take in resolving church property disputes. This decision does not conflict with the applicable decisions of this Court or of any other court.[7]

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[7] Since *Hull Church* the following cases in the few jurisdictions indicated have followed *Watson* "rule of action."

Pennsylvania: *St. John Chrysostom Greek Catholic Church of Pittsburg* v. *Elko*, 436 Pa. 243, 259 A.2d 419 (1969), *cert. denied, Dober* v. *Elko*, 399 U.S. 920 (1970); *Western Pennsylvania Conference of the United Methodist Church* v. *Everson Evangelical Church of North America: Western Pennsylvania Conference of United Methodist Church* v. *Mount Evangelical Church of North America*, 132 A.2d 35.

Washington: *Presbytery of Seattle, Inc.* v. *Rohrbaugh*, 79 Wn.2d 367, 485 P.2d 615 (1971), *cert. denied* 405 U.S. 996, *rehearing denied* 406 U.S. 939.

New York: *Second United Presbyterian Church of Johnstown* v. *Presbytery of Albany*, 35 A.2d 252, 315 N.Y.S.2d 428 (1970).

Illinois: *William H. Lowe, et al.* v. *First Presbyterian Church of Forest Park, a corporation, et al.* (1974) (Reporter Citation not available).

The approach taken was one of the three approaches recognized by this Court in *Hull Church* and approved in the *per curiam opinion* and (concurring opinions) in *Church of God.*

CONCLUSION

The Oklahoma Supreme Court adopted and followed the *Watson* "rule of action" as permitted by *Hull Church, Church of God,* and other relevant decisions of this Court.

There is no federal question of substance in this case which has not already been determined by this Court.

Petitioners have failed to show "special and important reasons" for this Court to grant their petition for a writ of certiorari.

For the foregoing reasons the petition should be denied by this Court.

Respectfully submitted,

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April, 1974

CERTIFICATE OF SERVICE

This is to certify that on this ..... day of April, 1974, three true and correct copies of the above and foregoing Brief in Opposition were delivered into the United States Mail, addressed to Stephen Jones, Post Office Box 3339, Enid, Oklahoma 73701 (attorney for petitioners) first class postage prepaid.

.....

Joe H. Glasser